

**MINUTES**

**MONTANA SENATE  
58th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON EDUCATION AND CULTURAL RESOURCES**

**Call to Order:** By **CHAIRMAN BILL GLASER**, on January 29, 2003 at 3:00 P.M., in Room 317-C Capitol.

**ROLL CALL**

**Members Present:**

Sen. Bill Glaser, Chairman (R)  
Sen. Bob Story Jr., Vice Chairman (R)  
Sen. Jerry W. Black (R)  
Sen. Edward Butcher (R)  
Sen. Mike Cooney (D)  
Sen. Jim Elliott (D)  
Sen. Royal Johnson (R)  
Sen. Jeff Mangan (D)  
Sen. Don Ryan (D)  
Sen. Tom Zook (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Tari Elam, Committee Secretary  
Connie Erickson, Legislative Branch

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: HB 78, 1/27/2003; HB 153, 1/27/2003  
Executive Action: HB 78; HB 153

**HEARING ON HB 78**

**Sponsor:** REPRESENTATIVE GARY BRANAE

**Proponents:** Madalyn Quinlan, Chief of Staff, Office of  
Public Instruction (OPI)  
Dave Puyear, Montana Rural Education  
Association (MREA)

**Opponents:** NONE

**Informational Witnesses:** NONE

**Opening Statement by Sponsor:**

*{Tape: 1; Side: A; Approx. Time Counter: 0.6 - 3}*

REPRESENTATIVE GARY BRANAE, HD 17, Southwest Billings, brought forward a bill which transfers authority for approving special Saturday school sessions from the Office of Public Instruction to school district trustees. REP. BRANAE indicated he brought this bill at the request of the Office of Public Instruction. He explained when a district would like to conduct instruction on Saturday they must petition OPI for permission; a time consuming and often inefficient process. Schools may need to seek approval for special Saturday sessions due to days lost because of inclement weather, personnel strikes, or any number of unforeseen contingencies. Adoption of this bill will allow for greater local control, lend to a significant reduction in paperwork, and greatly simplify the process.

**Proponents' Testimony:**

*{Tape: 1; Side: A; Approx. Time Counter: 3 - 4.0}*

Madalyn Quinlan, Chief of Staff, OPI, on behalf of the State Superintendent, conveyed her agency's support of the bill. Ms. Quinlan indicated REP. BRANAE's explanation of the bill was excellent. She did, however, want to emphasize schools will not be allowed to build Saturdays into their academic calendar under the bill.

Dave Puyear, MREA, stated his organization is in strong support of this bill due to its central theme of local control.

**Questions from Committee Members and Responses:**

***{Tape: 1; Side: A; Approx. Time Counter: 4.2 - 5.5}***

**SENATOR JEFF MANGAN** explained in his district schools hold special Saturday school in response to truancy. He inquired of **Ms. Quinlan** whether this type of session would continue to need the approval of the state superintendent. **Ms. Quinlan** replied she does not believe Saturday sessions of the type to which **SEN. MANGAN** referred are a part of the required 180 days of instruction and, therefore, would not be affected by this legislation.

**Closing by Sponsor:**

***{Tape: 1; Side: A; Approx. Time Counter: 5.6 - 7}***

**REP. BRANAE** expressed his appreciation to the Committee for the hearing and respectfully requested they pass the legislation on to the full Senate.

**EXECUTIVE ACTION ON HB 78**

***{Tape: 1; Side: A; Approx. Time Counter: 7.1 - 7.4}***

**Motion/Vote:** **SEN. BUTCHER** moved that HB 78 BE CONCURRED IN. Motion carried 9-0, with **SENATOR JIM ELLIOTT** excused. To be carried by **SENATOR JERRY BLACK**.

**HEARING ON HB 153**

**Sponsor:** **REPRESENTATIVE NORMAN BALLANTYNE**

**Proponents:** **Madalyn Quinlan, OPI**  
**Dave Puyear, MREA**

**Opponents:** **NONE**

**Informational Witnesses:** **Bob Runkel, Director of Special Education, OPI**

**Opening Statement by Sponsor:**

***{Tape: 1; Side: A; Approx. Time Counter: 7.5 - 9.4}***

**REPRESENTATIVE NORMAN BALLANTYNE, HD 86, Glacier County**, brought forward a bill which authorizes an employee of a state or local educational agency to act as a surrogate parent for a child with

a disability as long as that person is not providing educational services to the child. **REP. BALLANTYNE** explained the reason for this legislation arises from the practical realities of living in small and/or rural communities. When a child who has no living parent or is a ward of the state is relocated to a small community with a limited number of adults available to serve in the capacity of advocate for the child, the restraint of present law is truly problematic. The law requires a person to have the actual expertise necessary to serve in this capacity. Under present law in Montana, an individual who is an employee of any educational agency may not serve in the capacity of surrogate parent, thus eliminating many of the most qualified persons. This legislation narrows the restriction to only those individuals who are directly responsible for providing educational services to the child.

**Proponents' Testimony:**

***{Tape: 1; Side: A; Approx. Time Counter: 9.5 - 10}***

**Madalyn Quinlan, OPI**, noted the bill is at the request of **OPI**, and expressed her organization's support thereof.

**Dave Puyear, MREA**, expressed his appreciation to the sponsor for bringing this bill forward and for his dedication to education.

**Mr. Puyear** also expressed his organization's support for the bill.

**Informational Testimony:**

***{Tape: 1; Side: A; Approx. Time Counter: 10.4 - 12.3}***

**Bob Runkel, Direction of Special Education, OPI**, explained the need for this legislation arises from the Individuals with Disabilities Education Act (IDEA). IDEA requires each state have a procedure for appointing surrogate parents because parents play a particularly critical role in determining the special education needs of a child. **Mr. Runkel** stated location of the natural parents is not always possible despite diligent efforts on the part of the state and local community. Further, in some cases the parents have lost all parental rights and the child is a ward of the state. In both instances the law requires the role be filled by a person with knowledge regarding special education requirements. This legislation provides added flexibility for locating an individual who has special expertise and knowledge regarding special education needs for child with a disability.

**Questions from Committee Members and Responses:**

***{Tape: 1; Side: A; Approx. Time Counter: 12.5 - 16.2}***

**SENATOR EDWARD BUTCHER** asked **Mr. Runkel** how many Montana students are currently involved in a situation such as the one addressed by this legislation. **Mr. Runkel** responded although he does not have exact data for the number of children, he estimates the number of surrogate parents to be between 100 and 150. Given the number of children who are presently wards of the state, and the number of those children who are special needs children, the actual number should be in that range. **SEN. BUTCHER** noted the legislation says "parents or guardians cannot be identified," asking **Mr. Runkel** if these children have been placed neither in an adoptive family nor some other type of permanent situation, and are therefore living in an institutional or group home setting. **Mr. Runkel** replied, generally speaking, **SEN. BUTCHER** is correct. He explained only when a parent cannot be located or the state has permanent custody will this legislation take effect. **SEN. BUTCHER** conveyed his own experience with an incarcerated individual who has made every attempt to remain active in her child's life but has not been allowed to participate due to judicial order. He asked **Mr. Runkel** if this legislation might contribute to an increase in the number of children so identified. **Mr. Runkel** replied he is not sufficiently familiar with the type of situation to which the senator referred to provide an answer.

**Closing by Sponsor:**

***{Tape: 1; Side: A; Approx. Time Counter: 16.4 - 17}***

**REP. BALLANTYNE** noted this legislation left the House floor with a 99-1 vote. He believes the bill creates a safety-net for those children who have no one else and are in need of an advocate. He encouraged the Committee recommend Do Concur.

**EXECUTIVE ACTION ON HB 153**

***{Tape: 1; Side: A; Approx. Time Counter: 17.2 - 18}***

**Motion/Vote:** **SEN. JOHNSON** moved that HB 153 BE CONCURRED IN. Motion carried unanimously. To be carried by **SENATOR JERRY BLACK**.

**EXECUTIVE ACTION ON SB 120**

***{Tape: 1; Side: A; Approx. Time Counter: 19 - 31}***

***{Tape: 1; Side: B; Approx. Time Counter: 1 - 6.5}***

**Motion:** SENATOR TOM ZOOK moved that SB 120 DO PASS.

**Motion:** SEN. ZOOK moved amendment SB 012001.ACE.

**Discussion:**

**CHAIRMAN BILL GLASER** explained the amendment is in response to concerns raised regarding potential effects on the teachers' retirement program. He noted the amendment requires a person must have twenty-five years of credible service, be at least fifty-five years of age, and have terminated their active membership in the teachers' retirement system. The amendment also limits to 100 the number of persons who may participate at any given time and provides for a legislative termination date of July 30, 2007.

**SEN. BUTCHER** stated he would prefer the age requirement be raised from fifty-five to sixty. **CHAIRMAN GLASER** responded by explaining there are a number of teachers who retire at fifty-five, and this bill would allow such a person to continue working for 960 hours under contract without penalty to their retirement plan. **SEN. BUTCHER** explained his concern arises from the knowledge that some individuals will be allowed to draw against the retirement program while still being paid by the district. He asked whether a person would continue paying into the retirement program while drawing a pension. **CONNIE ERICKSON** replied in the negative. **SEN. BUTCHER** continued, stating since the person is replacing someone who would normally be paying into the retirement program he would prefer the contract employee be required to do so as well. **MS. ERICKSON** explained under the present rules of the retirement system an individual cannot teach or work full-time and draw their full retirement. She also noted, there are bills working their way through the House which will allow a person to work a few hours and still be able to collect their retirement. **SEN. BUTCHER** inquired whether this legislation would apply to another bill of which he is aware. **MS. ERICKSON** indicated she is not familiar with the particular bill.

**SENATOR JIM ELLIOTT** indicated his familiarity with the issue, and suggested in response to **SEN. BUTCHER's** concern that it is possible for a district to contribute to the fund to ensure actuarial soundness.

**CHAIRMAN GLASER** made reference to the amendment's limitation of 100 persons being eligible at any given time. He stated this places a strong restraint upon any potential risks to the retirement system.

**SENATOR JEFF MANGAN** inquired whether under the bill's requirement that a district must contract with an entity--his assumption being a company such as Express Personnel--there is a potential discrimination issue. Specifically, can a private entity discriminate on the basis of age? Can they list available positions and restrict employment to only persons fifty-five or older? **MS. ERICKSON** indicated she had not considered the possibility. She also outlined the basic qualifications under the present rules for the system stating, conceivably, someone could qualify in their late forties.

**SEN. BUTCHER** indicated this goes to the heart of his concern.

**SENATOR TOM ZOOK** stated, given **MS. ERICKSON's** explanation, it is possible to perceive present law regarding the retirement system as discriminatory. He does not believe that to be the case. He does, however, agree with **SEN. MANGAN** that the specific age of fifty-five might present a problem.

**SEN. DON RYAN** read the requirements together--must have twenty-five years and be fifty-five--stating an individual could begin teaching at fifty and never reach the requirements, but would be eligible for retirement benefits after ten years at the age of sixty. He thinks the requirements should be disjunctive; an "OR" statement should be used rather than "AND." This would allow someone to qualify in either situation.

**SEN. MANGAN** reiterated his concern arises not from the legislation itself, but from knowledge regarding laws governing private sector hiring. He does not believe a private company can inquire about someone's age and, accordingly, limit consideration to only those older than fifty-five. He referred to the fifty-four year old who has sufficient experience but cannot be considered due to age who then files a complaint.

**SENATOR ROYAL JOHNSON** inquired whether **CHAIRMAN GLASER** would consider delaying executive action on the bill until **MS. ERICKSON** has an opportunity to research concerns raised by the Committee.

**CHAIRMAN GLASER** inquired whether **SEN. ZOOK** would care to withdraw his motion. **SEN. ZOOK** withdrew his **DO PASS motions on SB 120 and SB 012001.ace.**

**SEN. BUTCHER** renewed his concerns on the overall requirements stating they lend to an opportunity for double-dipping. This possibility should suggest caution because of the potential effects on the actuarial soundness of the retirement system.

**SEN. ZOOK** stated he is more concerned by the number of schools in desperate need of people. He also indicated concern for individuals who attempt to provide assistance and are penalized. As a point of explanation, **SEN. ZOOK** stated in his own district when a school was in need of a principal and could not fill the position a former principal who had retired volunteered. His original agreement was to fill the position for a single year until they were able to find a permanent employee. After the gentleman began working he was informed that once he retired again he would have to wait an additional three years before his retirement benefits realized a cost of living increase.

**END DISCUSSION ON SB 120.**

**CHAIRMAN GLASER** outlined the various bills coming before the Committee the next three meetings.



**ADJOURNMENT**

Adjournment: 5:00 P.M.

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SEN. BILL GLASER, Chairman

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TARI ELAM, Secretary

BG/TE

**EXHIBIT** (eds19aad)